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Hierarchichal

Authority of *al-*

Kutub al-Sitta in

Islamic Law

Development.

Reflection of Early Prophetic Tradition and Sharia to Emerge Muslim Society Back flash to Ideal Community

(Historical Education Approach)

By Muhammad Habibi Siregar

Abstract

Prophet prohibited his sahabat to write down the hadith due to prevent the mix between Quranic text and hadith. Thus the figure of prophet Muhammad as a prominent man to attract all of sahabat to imitate his activities, later this was called as sunnah. The ideal of prophetic tradition birth was to bridge the normative value and practical of law due those make prophet as the ascribed pious Muslims around the world until now. The content of prophetic traditions mostly about submission to Allah, muamala related to economy activities, the political attitude, or as the Islamic evangelist.

The harsh statement by Robert N Bellah one of the prominent sociology toward Muslim society "the social structure was made by prophet Muhammad is too sophisticated in the uncivilized society in his era. The modern attitude was built in prophet era to accommodate the all stake holders in society to form the desired society for all. The charismatic leadership performed by the prophet astonishing the native residents in Medina to acclimate him as the leader of Medina people. The concept of the Medina tractate was forward step beyond their era is perceived as the first constitution as a nation.

Key Word: Sharia, Hadith, Modern, Ijtihad

A. The History of inter-connect between Fiqh and Canonical Hadith

Fiqh cannot be separated with tradition, therefore the work done by Wael B. Hallaq that Islamic law is still dynamic with new *ijtihad* (rational hermeneutic method) of the scholars throughout the phase questioned by Calder.¹ Calder questioning what exactly is Islamic law that the original is still there, for him since the 10th century until the 19th century there was no law of Islam which was born from the original methodology uses clergy and Islamic sources. Because according to Islamic law during the 9th century adopted laws only from the outside at least not only dwell on the problems that were discussed clerics before the 5th century because the products produced by legal scholars began after Imam Shafi'i stagnates with al-Risalah. It can be seen from the business Qanun in the Ottoman Empire by importing products from the French commercial law then labeled in Arabic and Muslims regard as Islamic law.

¹ Look Norman Calder, *Islamic Jurisprudence in Classical Era*, edited by Colin Imber (Cambridge University Press, 2010), 14.

Unlike Calder, Wael B. Hallaq further understand that Islamic law is dynamic and evolving, meaning he understands Islamic law is a legal product that is practiced daily and legitimized by clerics who have authority.² The meaning of scholars who have authority here fatwas scholars who discuss issues and then the fatwa fur'iyah practice within the larger community due the support of the Islamic scholar who always deal with the different situation. Although Coulson rejected individual fatwas after the 5th century H because it has no scientific authority, he suggest that fatwa favored collective scholar opinion in term of the current situation.³ For Wael B. Hallaq wait communally fatwa will take a long time meanwhile social behavior changes very fast need to be responded by giving fatwa *furu* '.

Indeed, when examined allegations that Calder *ijtihad* in Islamic law already covered a point on one side when it refers to the fact in the constellation *ijtihad* of the scholars until now only make the process of Islamization of the products of existing law from West product. This claim appear because no scientific evidence to prove the continuity of new legal jurist product since the twelve centuries. Wael B. Hallaq also implicitly recognizes that changes in Islamic law had evolved to the work done by contemporary scholars fatwa *furu* ' labeling effort initially Islam. It seems that contemporary Muslim scholars acknowledge hard to get out of the circle of stagnation there over the years. So the first step taken by labeling them Islamic or borrow a phrase Ismail al-Faruqi and Naqib Alatas 'Islamization of knowledge' when resources already meet the scholars will find the original *ijtihad* in answering all the problems in the community, so Wael B. Hallaq using terminology evolution in Islamic law. Since it is impossible to make Islamic law Islamic revolution when the ingredients of the revolution came from mixing outside (read: the West).⁴

further, Josep Schacht also acknowledge the opinion that said the establishment of Islamic law began in the 3rd century AH, this is due to the codification of a hadith sunnah (prophetic tradition) actually created in this period that the establishment of Islamic law began in the 3rd century AH that Joseph Schacht claimed the formation of hadith texts that later became the basis of law. If so, how did the prophets of since Prophet Adam to Prophet Moses, they did not receive the revelation of God in the form of book or article but since the Prophet Moses to the Prophet Muhammad. Consequently when referring to opinions of

² Look Wael B. Hallaq, *An Introduction to Islamic Law* (London: Cambridge University Press, 2009), 38-40.

³ Norman Calder, *Islamic Jurisprudence in The Classical Era*, 2010

⁴ Wael B. Hallaq, *An Introduction to Islamic Law* (London: Cambridge University Press, 2009), 38-40.

Joseph Schacht formed the basis of the law should refer to the written sources means the prophets before Prophet Moses as Prophets Noah, Abraham, Lot, and others they do not carry and spread the law of God. Meanwhile, one of the main functions of a prophet delivered the law / rule of God to the people respectively. Because humans since 3200 BC recognize text with reference age of the letters contained in the wall pyramid (heliography) in the ancient Egyptian as Pharaoh II or Pharaohs who oppose the teachings of the Prophet Moses.⁵

Due to the rational background was why Allah sent down a revelation the first time in the sacred text because people Moses era had known the writings, it would be naive for Allah if he sent down revelation in written formation to the people whom are not familiar with writing. However, that does not mean the law has not been established in community before Prophet Moses while the writing has not been found, and it was impossible.

Despite Muslim scholars will continue to experience difficulties in term producing the original *ijtihad* coincide people's growing problem. The obstacle will continues to experience tremendous growth while using only conventional patterns (classical fiqh method). Amid one of the weaknesses of the scholars so far in producing results that original *ijtihad* latter are due less critical of the methodology classical scholars in understanding the Qur'an and hadith, especially in matters of hadith. Even though *ijtihad* stagnation became critical issue among scholars of law. Because the pace of development of society is not comparable with the ability of scholars to produce sufficient diligence in answering the question of current issue. So often unwittingly dichotomy between religion and social issues as the clerics who formed the de facto authority in solving society's problems are not considered to have the capacity to solve the existing problems.

The study of jurisprudence that focuses on behavioral aspects *mukallaf* in society tend to be responsive, it means the study of fiqh just reactive to societal attitudes with arguments based on texts or *ijtihad* of the scholars. while the object of *usul fiqh* studies concerning the Qur'an and hadith texts, the texts used as social engineering. Thus the study of fiqh and *usul* actually interrelated and complementary but more study jurisprudence can explore the area more freely because based on the dynamics of the community. The problem is the study of jurisprudence that should be able to reach all aspects of human life hindered by provisions

⁵ James. P. Allen, *Middle Egyptian, An Introduction to The Language and Culture of Hieroglyph*, Second Edition. (London: Cambridge University, 2010), 15.

that emphasizes hierarchy classic books of traditions on top of that tends to privilege aspects of ritual worship. So it can be proved so long Muslims are bound by the rules that are ad-hoc as-canonical six book of hadith hierarchy regarded as something that should not be contested if you do not want to say cult.

Then there are differences among scholars on the subject of Sunnah, Sunnah tasyri'iyah (prophetic legal tradition) and non-tasyri'iyah (non-prophetic legal tradition).⁶ The challenge of the authentic of prophetic tradition emerged the perception the traditions of the Prophet Muhammad shows that as a human beings are also wrong. Such as the Hadith about palm fruit pollination event when Prophet Muhammad rebuked their actions in the pollinated fruit and dates. Because apparently reprimanded their palm crops being dropped so they complained about it. Meanwhile the Prophet replied, "you know better the affairs of the world." Traditions that match that showed the weaknesses of the Prophet Muhammad as a man that how al-Qarafi split the role of Muhammad as the Messenger, leader or head of state, or as a human being.⁷

The magnitude of the effect hierarchy books of traditions can be seen how well experienced classical scholars until now when talking about the obliged ritual worship (*mahda*), so sometimes ordinances of worship such as prayer may indicate to understand theology or in the case of Indonesia (read: understand religious organization) incurred because of the many opinions of scholars on the issue of worship ritual. But when they are asked to solve problems arising from the escalation of development in civilization and technology, they reluctant to answer due incapability. While the Muslims' confidence get a warranty from Allah, even Prophet Muhammad has been to ensure that Islam is perfect religion which can answer all the challenges nay time and any place. This claim usually remain embedded in the hearts of Muslims.

The Suggestion is exactly what makes a variety of different perceptions among Muslims represented by the scholars. There are sensible in Islam that Quran and Hadith have to answer all the problems, they often apologic back to God's law, namely the Qur'an and hadith but when they are asked how the essence of texts can be extracted in response to the challenges.⁸ Sometimes there are also people who have a more realistic understanding the

⁶ Al-Amidy, *al-Ihkam fi Usul al-Ahkam*, Juz I, (kairoh: Muhammad Ali wa auladuh, 1968 M), 277.

⁷ Al-Qarafi, *al-Furuq*, (Beirut: 'Alam al-kutub, tt), 206-209.

⁸ Sayyed Hosain Naser, *Ideal and Realities in Islam*, (Boston: George Allen and Unwin, 1975), 100.

situation by trying to borrow methodology or procedure scholarship from the outsiders and are used to address social issues such as the problems of jurisprudence by using the Islamization. This is in contrast to Western societies that have multi-players of the scientific community that connects from the top level such as in Islamic Studies Ignez Goldziher, Joseph Sacht were translated by Coulson, John Wansbrough, and was greeted by Johansen, Gibbs, and described by the researchers centered in Western universities.

The trick of infidel label, *ingkar al-Sunnah*, and other misguided labels still haunts Muslim scholars, so many Muslim scholars did not dare to resist mainstream opinion even its some unlogic. Meanwhile the West has done with this issue ten centuries ago with the death of Bruno, Copernicus were convicted as infidel as they opposed to church's dogma. It can be seen that Hadith scholars such as Imam Bukhari and Imam Muslim almost be considered the equivalent to Quranic sacred text for many Muslims. Although not spoken or written clearly but in practice criteria prophetic traditions of both well known clerics are considered final and thus no longer changed. It triggers the stagnation within Muslim world because there is no Islamic jurist as capable as four founder mazhab (Islamic school of thought) after them, due difficult for studies to develop jurisprudence.⁹

On the issue of the development of study about hadith likely face the solid brick for scholars because of afraid the allegation to whom questioned both in terms of the sanad and matan tradition, they will be called *ingkar al-Sunnah*.¹⁰ In contrast to scholars who study the Qur'an, they are rather free to challenge the authenticity of Quran, without scaring to be called *ingkar Quran*. Because Quran is considered a high authority that it is impossible tainted.

B. The Ambiguity to face Modernity But Stuck in Past Glory

If Modernity was defined as the something designated for advanced better life for human being, surely Islam as the most categorized modern religion. Because almost all aspects to endorse the modernity attached with Islam. Even the first Surah al-Alaq (The Clot, Read !) in al-Qur'an mentioned with *iqra'* mean recite ! the connection modernity in positive aspects is very strong. Because Muslims' contribution to world civilization undeniable, Islam endorsed all the Muslims potency to become the giant civilization in medieval era. And the invention by many Muslim in mathematics, astronomy, medicine, philosophy, biology

⁹ Jonathan A.C Brown, Did The Prophet Say it or Not ? The Literal, Historical, and Effective. Truth of Hadiths in Early Sunism, Journal of The Oriental Society, 2009

¹⁰ Al-Qadi 'Iyadh, *al-Syifa' bi Ta'rif Huquq al-Mushtafa*, (Beirut: Da'r al-Fikri, 1988), 180-195.

triggered many scientific works by Muslims scholar far before westerns society know about the scientific work.¹¹ But the Muslim contribution was denied for long time by them only for recent days little by little they want to recognize Muslim scholars for world civilization.

The different modernity between Muslims and westerners, mostly Muslims scholars always connected his scientific works with Islam and Allah, besides Muslim scholars identically with Islam. But for westerners, they are not connecting with Christian, because their religion almost unconnected with the advance and forward. And while Muslims were in peak advance in wealth and knowledge was never found the moral problems in Muslims society, because of the balance life between material and immaterial in Islam. Unfortunately, reverse in western ultimate goal in science and technology but in the other side inhumane themselves and many of western society lost their faith to God and became immoral. The appear of atheist, hippies, chauvism as the excess of the advancing science and technology. There is missing here, the divine essence, for Islam almost impossible to dismiss the role of divine essence of every Muslims in this world. The divine essence must be involving in every aspect of life, without it human will lost the path way to have happiness in world and next.

For Muslims the modernity as the gift to help them more understanding about Islam and Allah. Look in pilgrim to Mecca is easier right to reach there than past time with planes. Even the sophisticated technology can make Muslims closer to Allah, Because many illustrations were described in al-Qur'an can be proved by technology. Look at how al- Qur'an have described thousands years ago about lake under sea, now it has be proven in Mexico's sea. Or in the cave of *ashabul kahfi* (young people fled from dictator king were asleep by Allah more than three centuries) was found in Jordania . Or the body of fir'aun (the second pharaoh or Ramses two) not perish like Allah promised in al-Quran.

Actually, the modernity in Islam as the good news to develop humanity and to explore the content of Quran and hadith. For others religions modernity as the threat of their legitimacy because it consequently the transparency of religion's truth.¹² It force their prominent scholars or clerics to change and renew the text of their holy books instead of unrelated or contradicted with the current value.

¹¹ Ali Aftan Mian, Muslim Political Philosophy and the Affective Turn: Al Farabi on Language, Afect and Reason, Journal of Shi 'ah Islamic Studies, Vol IV, 2011, 47-50.

¹² Illias Bantekas, *The Disunity of Islamic Criminal Law and the Modern Role Ijtihad*, (Interntional Criminal Law, Martinus Nijhoff Publisher, 2009, 651-656

The role of Islam in this term is very important unless Islam can fulfill the missing link between knowledge and moral value. But the biggest obstacle coming from Muslim alone, because many of Muslims still rigid to implement of al-Qur'an and Hadis. It's ever said by Mohammad Abduh who was the former rector of al-Azhar University the oldest university in this world and the prominent cleric Muhammad Abduh in nineteenth century that "Muslims were left behind by Muslims alone."¹³

There are three categories of Muslims to perceive about Modernity; People who rejected the modernity and consider as the product of western society who are assumed as infidels. People who accept the modernity but just for the specific items to easier their acceleration but for some cases they are still restricted in rigid manners like in Saudi Arabia.¹⁴ Muslims who believe that modernity is the solution to advance and regain their glory in past time amid still observe the obligation to Allah without sacrifice their own belief and value.

The Muslims who are living now but their imagination about Islam still in medieval era, they implement Islam on behalf obeying Islam totally until want to follow the behavior and style of life like their predecessors. So they reject everything which is not practiced by the early Muslims even they accuse the democracy as the result of modernity as the rejecting value because of coming from western value. But in fact, if they check carefully the value of the democracy if the democracy is assumed as the people's voice was practiced in the *khulafaurrasyidin* succession (the first caliphate after the death of prophet Mohammad). The Muslims like this can be categorized like Taliban in Afganistan or the few extreme conservative Muslims, their numbers are just few but because their existence are often in spot light that make their numbers likely majority in Muslim world but actually very few.

The Muslims are perceived in this category was the likely modern but in the reality not. Surely, if the modernity's definition was the using the most current tools like luxurious cars, hotel, planes, or the high skyscraper buildings.¹⁵ But the mind of modernity to more transparency in any sectors was less, it make the Muslims in this category to be more consumers of technology than the producers of technology. The new trend of thought can be seen as the threat for conservatives who enjoyed the status quo. And the new uprising of Muslim in Middle East indicates the rejection toward the status quo but the cost of the

¹³ Almanar Magazine which published in 19 centuries.

¹⁴ A. Dallal, Origin and Objective of Islamic Revivalist Thought, Journal of American Society, 13, 1993, 340

¹⁵ Yves Lambert, Religion in Modernity as a New Axial Age: Secularization or New religious Forms, Journal Sociology of Religion, Fall, 199, 5-8.

revolution is too expensive. The uprising in Middle East in 2011 starts in Tunisia and cross to Egypt finally spread to whole of the region including Libya, Yaman, Bahrain, Oman Syria,etc. The uprising appears to the surface because the attitude of the ruling Government don't want accept the change of opportunity and transparency as the requirement living in modern world today.

The Muslims are categorized to the people who hails the modernity as the chance for Muslims to resurrect from the backward by affirming the science and technology and the modernity's value to energize the giant sleeping potency of Muslims. So for Muslims in this stage mostly adapt the good value of modernity and reject the bad excess of it. In fact, no perfect example about it but at least to close to the sample likely Turkey now day under President Abullah Gull and Prime minister Tayyib Erdogan who tried to transform Turkish from total secular begin to mix with spirit of Islam. As long as they far away from Islamic Value makes them more suffered and looked like alien the other dimension. So now, they redefine the existence of themselves by referring the real glory of the past time. They realize that they can be only with Islam to be the world ruler, so while Europe likely reluctant to accept it as Member's EU (European Union) make Turkish try to build the economic connection with their neighbors and right now Turkey as the power house in this region with the fifth largest economic in Europe and 16th in this world.

Modernity in Islam is the path way to refresh of Islamic atmosphere which is stagnant thought to reload of fresh idea to pursuit the glory of Islam again. Modernity in Islam is designated to combine the spirit of searching science and technology and to fill in the bad excess of modernity itself with the divine essence. The Islamization of Ismail al-Faruqi and sayyed Hosen Naser is the formation of spirit modernity in Muslim scholars. Even though the idea is criticized because just to waste energy of Muslim but the message of it clearly that the importance of the divine essence inside spirit of modernity in order to keeping modernity on track for the goodness of human being.

There are many interesting points about Islam in Islam which came about 13th century AC; mostly priests came from (Yemen) and Gujarat (Northern India). One of them that Islam had been coming to Indonesia without invasion or bloody weapon. But Islam came by trading process and marriage with noble indigenous people. The traders poised as the impressive men attract native people to obtain the welcome from them. Muslim traders' ability in the era interacted with local people in business activities and spreading Islam. The other

supporting idea above, spreading Islam quickly is making contact to the local rulers in Indonesia. In the time, Indonesia had many small kingdoms. The brilliant way to build business networking was taken step by traders due hidden mission to spread Islam. The habit of local rulers usually married to success merchant whom they were mostly foreigners to royal family. This situation made Islam was easy to spread overwhelmingly this country. And finally, many local rulers converted to Islam.

Indonesian characteristic predominantly is patriarch, particularly, for rural society. The converted royal family is likely the indirect command to its people to accept Islam as new state religion. This characteristic remains right now in Indonesian society to follow their leader in any social activities and behave likely to their mentor. In rural society, particularly, in Indonesia this characteristic brings positive impact or negative impact. Positive impact of patriarch can be seen by more easily engineering of society to the pattern of the ruler's. The negative impact of them is more resistant for something except for something is legalized by their ruler. And fortunately, Indonesia history most rulers' kingdom own more flexible to accept for new faith coming from outside. Actually, Indonesian anciently original faith is animism and dynamism that they inspired all Indonesia ancient life and some of their practical belief can be found in rural life. For example kejawen in some area in Java, jamu laut in limited area in northern Sumatra, but the practice is instilled by Islamic culture.¹⁶ Here, in Indonesia can assimilate Islam with local culture is not found in other Muslim countries. The uniquely Islam in Indonesia poise Islam in Indonesia more tolerant rather than Islam from its original in Middle East. So the history of peaceful and harmonies with different faith was built for long time ago since the first settler in Indonesia. But lately, terrorism become new stigma in Islam because Trans- national thought was brought from Middle East. And this group get attention from media so they become big image, due the silent majority is moderate and they hate the terrorism action on behalf Islam.

Islam came into Indonesia in 13th century which predominantly from Sufi (mystical in Islam) which can enter to structure society, because Sufi emphasize toward the esoteric of Islamic value was easy adapted for local social religious practice. And behavior of Sufi priests so polite and gentle without confront with the all faith but adapt ate and assimilate Islam and all faith in social religious activities. Likely, many traditions in Keraton Yogyakarta which is

¹⁶ George Ritzer, *Modern Sociological Theory*, (New York :The McGraw-Hill Companies, INC, 1996), 235

combined between Islam and all faith value. The combined tradition between Islam and culture is called Islam cultural. This approach make Islam more acceptable to most area in Indonesia, due many Muslim puritans toward this step but in many cases proved the link Islam and Local culture to enrich new Islam is not in Middle East performance.

The effect of Islamic law in Indonesia that under Islamic law marriage does not alter the Muslim woman's legal status as full personality, capable of owning and disposing of income and property as she pleases. Neither does marriage alter woman's name. Her residence and conduct in life are regulated by the contract of marriage. Islam regards men and women as absolutely equal in their religious and civil duties, although it does not understand this equality as implying equivalence of natural capacities and talent, or as identity of role. The Islamic family is not a nuclear one, consisting only parents and children. It is extended to include the grandparent, grandchildren, uncles and aunts and their progeny¹⁷.

The dark side Islam spreading in 13th century while Muslim world facing in decreasing era in science and civilization, but mystic in Islam (Sufi) grew likes fungus in rainy season. Islam entered to Indonesia is assumed when Islamic golden age in science and civilization began to collapse changed in Sufi or tharigat. The consequently Islam which came in this era not give any contribution in science or civilization, although Islam gave contribution to renaissance in Europe through Muslim Spain civilization /Andalusia.

Few contribution by Islamic local kingdoms, basically, is in domestic area which adapted to books were written by Muslim scholars from 8th century until 10th in Middle East. The domestic area here was in marriage rule and few about poet and no evidence that Islamic kingdom era creates the new invention in science in Indonesia. Even though Islam spread quickly in Indonesia but Islam here has not rooted in science. And the history of Indonesia was described how the Islamic kingdoms became the looser face to face the formidable colonials make the grade of Islam decreased among Indonesian people who had little pride about Islam in their own history. The attitude of majority of Muslim in Indonesia looks Islam as theology matter, and make Islamic state in Indonesia is more difficult here because

¹⁷ Ismail R. al Faruqi and Lois Lamya al Faruqi, *The Cultural Atlas of Islam*, (New York: Macmilan Publishing Company, 1986), 150

majority Muslim rejects to transform Indonesia become Islamic state.¹⁸ Why majority Muslim in Indonesia rejects to change Indonesia become Islamic state, because Islam value is never actualized in comprehensive value only in theology and few of Islamic domestic law.

One of the interesting points about Islam in Indonesia is exist in this country by peace way without invasion, or colonial make Islam spread and became the biggest Muslim population in this world. Before coming Islam in this land, there are many faiths exist, so Islam in Indonesia has contacted with much faith and makes Islam more tolerance and more acceptances. Basically, the growing Islam in Indonesia owns two aspects are the positive aspect and the negative aspect. The positive aspect Islam grows in Indonesia related to Islam which came without invasion make Islam grow easily. But the negative aspect Islam with enter thirteen centuries Islam begin to collapse in civilization, so Islam did not give any contribution toward civilization in Indonesia.

The defeated story the Islamic kingdoms toward the colonials makes feeling inferior among Muslim in Indonesia until to blur their confidence to Islam as rule of life. So their rejection toward implementation Islamic Law can be described their inconvenience toward it. But Islam in Indonesia has specific characteristic which try to build new identity on behalf Islam.

This book will show the true toward Islam whether Muslim in Indonesia will form a secular country or formal Muslim institution is based on their own history. This research will formulate the modern social theory toward Muslim attitude particularly in their perception about Islam whether Muslim must create Islamic state or secular state like in Turkey or even to make new moderate Islamic state.

Indonesia is the unique country because it has the largest Muslim in this world which lies outside of Middle East as the center of Islam. Indonesia traditionally has scent tolerant to other faith in their behavior daily. But now days, Indonesia must face the difficult situation with complicated influence from outside, the influence sometimes to force to change the value was held by the majority of the people. The force is not only to poise in life style, ideology, politic, even faith. Here Indonesia must wise to determine the suitable things for them, because Indonesia is very fracture to be collapsed like in former Uni Soviet which had variety of ethnic, language, and separated islands. But if the things are managed well,

¹⁸ Look at the history the erasing of the Jakarta Tractate in Indonesia History while many eastern part Indonesia rejected the tractate.

Indonesia can be a ideal of Muslim country that Indonesia can become modern country without escaping from both their traditional value and faith.

In Islamic history perspective the prophet's pilgrim (hijrah) to Medina as the great momentum to form the ideal society in Islamic society. This prophet's step to consolidate the muhajirin and anshar which indicate the forward strides in the time. It's the rare assimilation occurred within tribal society like in Arab. After reaching the integrated society within society in Medina the next step is to make MoU (Memorandum of Understanding) to non Muslim native residents in Medina was known the Medina Tractat. This tractat is assumed as the vision step of Muslim to maintain the peaceful among the stake holders within society. The tractate of Medina can be perceived as the phenomenal agreement was achieved by the new birth religion. This agreement is seen as the written evidence in tribal societies which they had known in barbaric style. This tractate is the most early recorded which inspired the United Nation to make the declaration of human right in 1948.

The description above is likely apology with unfair judgment to compliment ourselves in Muslim side perspective. Unfortunately, the normative description is far from the real situation currently, the stigma of intolerance is exposed by media to put the militant minority as the Muslim cover as the general. even the allegation to put Muslim community as the intolerance society due not a single society in current situation can be similarly like prophet Muhammad era. The harsh statement by Robert N Bellah one of the prominent sociology toward Muslim society "the social structure was made by prophet Muhammad is too sophisticated in the uncivilized society in his era. The modern attitude was built in prophet era to accommodate the all stake holders in society to form the desired society for all.¹⁹ The charismatic leadership performed by the prophet astonishing the native resident in Medina to acclimate him as the leader of Medina people. The concept of the Medina tractate was forward step beyond their era is perceived as the first constitution as a nation. This agreement is also perceived as the birth of nation.²⁰

In the constitution consist the equal right of the ethnicity diversity is conceived as one nation. If any threat come to endanger of the tribal ethnicity must be perceived as the threat of whole nation. This situation prevent the infidel Quraisy to penetrate Muslim amid facing it will trigger the whole power to confront the infidel threat from Mecca. This MoU also make

¹⁹ Robert N. Bellah, *Beyond Belief*, Berkeley, University of California Press, 1991, h.161

²⁰ Munawir Syadzali, *Islam dan Tata Negara*, (Jakarta: UI Press, 1990), 58.

prophet had more time to empower and consolidate Muslim power face the future threat. The agreement which consist the rule to evaluate the social life, including law, economy and culture make the social life more comfort than before. The juxtaposition of the Medina Tractate can stimulate the harmonic the plural society emerged to become the united nation.

Conclusion

The mobility of Medina people in demography aspect increase dramatically, especially after the futuhat of Mecca (conquering Mecca). The heterogeneity of people lived in Medina had created the *amal ahli* Medina which's taken by Imam Malik one of the reputable sources in Islamic law. Quran is the main source of Islamic law for Muslim society sometimes the global verse of Quran was not problem for sahabat in the time due to ask directly to prophet about the confusion problem. But the problem while prophet died the real constellation of Islamic law begin to emerge because Quranic verses or prophetic traditions didn't evoke to solve the upcoming issue. It's not problem while prophet Muhammad alive, sahabat could ask directly the solution for their issue.

Prophet prohibited his sahabat to write down the hadith due to prevent the mix between Quranic text and hadith. Thus the figure of prophet Muhammad as a prominent man to attract all of sahabat to imitatae his activities, later this was called as sunnah. The ideal of prophetic tradition birth was to bridge the normative value and practical of law due those make prophet as the ascribed pious Muslims around the world until now. The content of prophetic traditions mostly about submission to Allah, muamala related to economy activities, the political attitude, or as the Islamic evangelist.

Consequently, the increasing of Medina residents the spread of Islamic wing power in prophet era unavoidable the new problem was the social stratification. The stigma slave to his master, Arab to non-Arab were very difficult to erase, Islam try to vanish the barbaric heritage slowly that it to avoid the shock within society. That why were the slave issues still prevail in many classical Islamic law. The incoming Islam purpose to put the strong foundation to create the respected society within society, later in modern life is known as the civil society. Prophet Muhammad in Islam is describe the mediator between God (Allah) as creator to human. Quran is very seldom to talk about lam explicitly but it talk more about the principle of moral value. Amid the universal value consist in Quran that need the explanation of hadith.



Universiteit Leiden



Leiden, 2 November 2013

CERTIFICATE OF ATTENDANCE

The Leiden University Centre for Linguistics (LUCL) hereby certifies that

MUHAMMAD HABIBI SIREGAR

has attended the Conference Arabic in Context on Sunday 3 November 2013,
held at Leiden University in the Netherlands.

On behalf of the organising committee,

Anne Rose Haverkamp

Conference Assistant at the Leiden University Centre for Linguistics



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STATEMENT OF RESEARCH VISIT

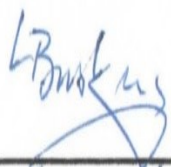
This is to certify that

Muhammad Habibi Siregar

has successfully participated in a research visit to Leiden University, which took place between 23 October – 16 November, 2013,
where he presented his research.

The programme of this research visit is enclosed on the back of this certificate.

Faculteit der Geesteswetenschappen



Professor Léon Buskens
Director LUCIS



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Research Programme

Tuesday 5th of November

11.00- 13.00: Research meeting | Groene Kamer, Faculty Club, Rapenburg 73, Leiden

Wednesday 6th of November

10.00-12.00: Hajj exposition | Guided tour by Dr. Luit Mols | Rijksmuseum Volkenkunde / National Museum of Ethnology

Thursday 7th of November

11.00-13.00: Lecture by Dr. Nico Kaptein | 'Islamic posters from the Netherlands East Indies' | Lipsius building, room 307, Cleveringaplaats 1, Leiden

15.00-17.00: Guided tour of Leiden University Library | Dr. Birte Kristiansen and Dr. Doris Jedamski | Leiden University Library

Monday 11th of November

13.00- 15.00: Guided tour through "Islamic Leiden" | Starting point of tour = in front of Leiden University Library

Tuesday 12th of November

13.15- 15.00: Lunch | Restaurant Faculty Club, Rapenburg 73, Leiden

15.00- 17.00: Lecture by Professor Léon Buskens | 'Islam and Muslim Cultures. Changes and Continuities in Islamic Studies in the Netherlands in an International Perspective' | Lipsius building, room 2.28, Cleveringaplaats 1, Leiden

Wednesday 13th of November

10.00: Welcome at KITLV by Drs. Nico A. van Horn | KITLV / Royal Netherlands Institute of Southeast Asian and Caribbean Studies, Reuvensplaats 2, Leiden

Thursday 14th of November

11.00-13.00: Final research meeting | Sterrewacht building, room C003, Sterrenwachtlaan 11, Leiden

15.15-17.00: Lecture by Nathalie Bernard-Maugiron | 'Constitutional Reform in Egypt after the Fall of Mubarak' | Matthias de Vrieshof 4, room 008A, Witte Singel 25, Leiden

18.00: Dinner | Restaurant Faculty Club, Rapenburg 73, Leiden

Friday 15th of November

09.00-17.30: UK-Netherlands Sharia Workshop | Keynote speaker Prof. Kecia Ali | Convenors Prof. Robert Gleave and Prof. Léon Buskens | Gravensteen building, room 011, Pieterskerkhof 6, Leiden

18.00: Dinner | Restaurant Faculty Club, Rapenburg 73, Leiden